

**FEDERAL ELECTION COMMISSION**

**999 E Street, N.W.  
Washington, D.C. 20463**

2013 DEC 20 AM 11: 51

**FIRST GENERAL COUNSEL'S REPORT**

**CELA**

MUR: 6745

DATE COMPLAINT FILED: 7/12/13

DATE OF NOTIFICATION: 7/16/13

LAST RESPONSE RECEIVED: 8/20/2013

DATE ACTIVATED: 9/24/13

EXPIRATION OF SOL: 03/13/18-04/5/18

ELECTION CYCLE: 2014

**COMPLAINANTS:**

American Federation of Government  
Employees PAC  
J. David Cox  
Kevin LaDana

**RESPONDENT:**

Jennifer T. Scott

**RELEVANT STATUTES  
AND REGULATIONS:**

2 U.S.C. § 432(b)(3)  
2 U.S.C. § 434(b)  
2 U.S.C. § 439a(b)  
11 C.F.R. § 102.15  
11 C.F.R. § 104.3  
11 C.F.R. § 113.1(g)(1)

**INTERNAL REPORTS CHECKED:**

FEC Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

None

**I. INTRODUCTION**

The American Federation of Government Employees Political Action Committee ("AFGE-PAC") alleges that union member Jennifer T. Scott embezzled \$1,507.28 from its bank account using two fraudulent checks. AFGE-PAC disclosed the embezzlement to the Commission shortly after discovering it. Scott claims that she is the victim of identity theft

1 and did not embezzle the funds. Even if the allegations in the Complaint were true, we  
2 recommend that the Commission find no reason to believe that Scott violated 2 U.S.C.  
3 §§ 432(b)(3) and 439a(b), or 11 C.F.R. §§ 102.15 and 113.1(g)(1) and close the file.

## 4 **II. FACTUAL AND LEGAL ANALYSIS**

### 5 **A. Factual Background**

6 AFGE-PAC is the separate segregate fund of the American Federation of Government  
7 Employees ("AFGE") and a political committee that reports to the Commission. Jennifer T.  
8 Scott is a member of the AFGE and a contributor to AFGE-PAC. Compl. at 2 (July 12,  
9 2013); Resp., Attach at 2 (Aug. 20, 2013).

10 AFGE-PAC alleges that two checks were fraudulently issued on its bank account —  
11 check number 2742 in the amount of \$645.80 on March 13, 2013 and check number 2741 in  
12 the amount of \$861.48 on March 19, 2013. Compl. at 1. The checks appear to have been  
13 issued in the form of personal checks, with the name and address of "Theresa Scott" and  
14 AFGE-PAC's Wells Fargo Bank account number and routing number imprinted on them.<sup>1</sup>  
15 Compl., Attach 3. Both checks were made out to Target and cleared the bank on April 5,  
16 2013. Compl. at 1.

17 AFGE-PAC states that it reviewed its database and discovered that the address on the  
18 checks matched that of AFGE union member Jennifer T. Scott. Compl. at 1-2. AFGE-PAC  
19 subsequently filed a claim with Wells Fargo Bank, in which it stated that Scott was given  
20 AFGE-PAC's Wells Fargo Bank account and routing number to facilitate her payroll

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<sup>1</sup> AFGE-PAC alleges that it uncovered the fraud on May 2, 2013 while its FEC Compliance Specialist was doing routine bank reconciliation and noticed that checks were out of sequence. Compl. at 1. AFGE-PAC notified Wells Fargo Bank of the discrepancy, and the bank refunded the \$645.80 amount from check number 2742 because it could not sufficiently decipher from the blurred information whether the check was erroneous or fraudulent. *Id.* Based on the legible information on check number 2741, AFGE-PAC filed a formal claim of check fraud with Wells Fargo Bank the following day, May 3, 2013. *Id.*, Attach. 1.

1 deduction allotment and that Scott was not authorized to draw on the account. Compl., Attach

2 1. AFGE-PAC also filed a police report on June 19, 2013. *See* Compl., Attach 2.

3 AFGE-PAC disclosed the embezzlement to the Commission on May 17, 2013 in a  
4 Miscellaneous Report and in its Monthly Report. *See* FEC Form 99, Miscellaneous Report  
5 (May 17, 2013); FEC Form 3X, May Monthly Report of Receipts and Disbursements at 28  
6 (May 20, 2013) ("Monthly Report"). AFGE- PAC itemized the two fraudulent checks as  
7 unauthorized disbursements and a \$645.80 refund from Wells Fargo Bank as a receipt in the  
8 Monthly Report.<sup>2</sup>

9 Jennifer T. Scott denies writing or cashing the checks and asserts that she is a victim  
10 of identity theft. Resp. at 1. Scott, a Georgia resident, states that her full name is Jennifer  
11 Theresa Scott, but that she has never used or signed her name as Theresa Scott. *Id.* She  
12 claims that the signatures on the checks are not hers and that she has never had a personal  
13 account or personal checks with Wells Fargo Bank in Georgia. *Id.* Scott asserts that she lost  
14 her identification in December 2012 and learned that someone was fraudulently using her  
15 identification to charge merchandise at Target. *Id.*; Resp., Attach. Scott asserts that she filed  
16 an identity theft report with Rockdale County Police Department (case number ,  
17 and that, after investigating the fraudulent charges, Target declined to hold her responsible for  
18 them. Resp. at 1. Scott further asserts that she filed an identity theft complaint with the  
19 Federal Trade Commission (Victim FTC number .<sup>3</sup> *Id.*

<sup>2</sup> The transactions were disclosed as disbursements to Wachovia Bank with a note that they were unauthorized transactions made out to Target. *See* Monthly Report at 43. Wachovia Bank was acquired by Wells Fargo Bank. *See* <https://www.wellsfargo.com/about/corporate/wachovia>. AFGE-PAC reported receiving a refund from Wachovia Bank only for the \$645.80 amount; no explanation is given as to why the \$861.48 from check number 2741 was not refunded.

<sup>3</sup> Scott inadvertently identifies the Federal Election Commission as the recipient of her identity theft complaint. *See* Resp. at 1.

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1 Scott claims that she first learned of the fraud on May 17, 2013 when a Washington  
2 Times reporter contacted her about the allegations. Resp. at 1, Attach. Scott states that she  
3 immediately contacted AFGE officials to explain what happened, but that her phone and e-  
4 mail correspondence was to no avail. *Id.* E-mails attached to her Response indicate that Scott  
5 described her account of the fraud to AFGE officials in May 2013, well before the Complaint  
6 was filed. Resp., Attach. Scott surmises that an AFGE-PAC employee may be the actual  
7 culprit and expresses concern about AFGE-PAC publicly accusing her without a thorough  
8 investigation or consulting her. Scott states that she would fully cooperate with a  
9 Commission investigation and volunteers to provide any additional information or  
10 documentation that the Commission may need. *Id.*

11 **B. Legal Analysis**

12 Although there is no dispute that funds were embezzled from AFGE-PAC's bank  
13 account and that Scott's name was used to perpetrate the embezzlement, the parties in this  
14 matter disagree as to whether Scott is the person responsible. We need not resolve this factual  
15 dispute, however, because even if the allegations in the Complaint were true, there is no  
16 reason to believe that Scott violated the Federal Election Campaign Act of 1971, as amended  
17 (the "Act").<sup>4</sup>

18 **1. Personal Use**

19 The Act affords federal candidates and their campaign committees broad latitude in  
20 the dispositions of their campaign funds. 2 U.S.C. § 439a(a); *see also* 11 C.F.R. § Part 113.  
21 These permissible uses of campaign funds, however, may not be used to convert funds to  
22 "personal use." 2 U.S.C. § 439a(b). Conversion to personal use occurs when funds in a

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<sup>4</sup> Because AFGE-PAC timely reported the facts regarding the fraudulent checks to the Commission, there appears to have been no misreporting violation of 2 U.S.C. § 434.

1 campaign account are used "to fulfill any commitment, obligation or expense . . . that would  
2 exist irrespective of the candidate's election campaign or . . . duties as a holder of Federal  
3 office." 2 U.S.C. § 439a(b)(2); *see also* 11 C.F.R. § 113.1(g)(1). Campaign funds will be  
4 converted to personal use if used, for instance, to purchase household food items, supplies, or  
5 clothing. *Id.* The personal use restriction, however, only applies to federal candidates and  
6 their campaign committees. The Commission has recommended that Congress extend the  
7 prohibition against personal use of campaign funds to all political committees, including  
8 separate segregate funds such as AFGE- PAC, but Congress has not acted on those  
9 recommendations. *See* Legislative Recommendations of the Federal Election Commission at  
10 7 (May 10, 2012), <http://www.fec.gov/law/legrec2012.pdf>.<sup>5</sup> Absent such amendment,  
11 2 U.S.C. § 439a(b) and 11 C.F.R. § 113.1(g)(1) do not prohibit individuals to convert  
12 contributions received by a separate segregated fund to their own personal use, including  
13 through theft or embezzlement. Accordingly, even if the allegations in the Complaint were  
14 true, we recommend that the Commission find no reason to believe that Jennifer T. Scott  
15 violated 2 U.S.C. § 439a(b) or 11 C.F.R. § 113.1(g)(1).

16 2. Commingling

17 The Act and Commission regulations require that all funds of a political committee  
18 must be segregated from, and may not be commingled with, the personal funds of any  
19 individual. 2 U.S.C. § 432(b)(3); 11 C.F.R. § 102.15. These provisions would preclude, for  
20 example, depositing embezzled committee funds into personal bank accounts or placing  
21 personal funds into committee accounts to conceal the theft. *See, e.g.,* MUR 6526 (Cora  
22 Carper) (2013) (finding former political committee employee violated commingling

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<sup>5</sup> The Commission recently approved a similar recommendation on December 17, 2013,  
[http://www.fec.gov/agenda/2013/intgdoc\\_13-58.pdf](http://www.fec.gov/agenda/2013/intgdoc_13-58.pdf).

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1 provisions by cashing committee checks and depositing the funds into her personal bank  
2 accounts); MUR 6179 (Christopher Ward) (2011) (finding committee treasurer violated  
3 commingling provisions by depositing committee funds into his personal accounts and  
4 depositing personal funds into committee bank accounts). In this case, however, there is no  
5 indication that AFGE-PAC's funds were commingled with the personal funds of any  
6 individual, since the embezzler issued fraudulent committee checks directly to a retailer to  
7 buy personal items. Therefore, even if the allegations in the Complaint were true, we  
8 recommend that the Commission find no reason to believe that Jennifer T. Scott violated  
9 2 U.S.C. § 432(b)(3) or 11 C.F.R. § 102.15.

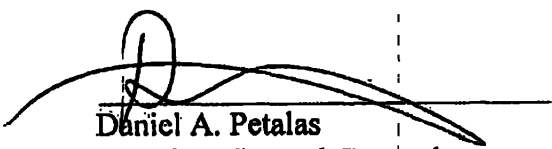
10 **IV. RECOMMENDATIONS**

- 11 1. Find no reason to believe that Jennifer T. Scott violated 2 U.S.C. §§ 432(b)(3) and  
12 439a(b), or 11 C.F.R. §§ 102.15 and 113.1(g)(1);  
13  
14 2. Approve the appropriate letters;  
15  
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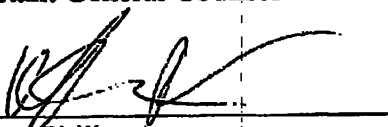
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3. Close the file.

12/19/13  
Date

  
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